

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

**WEBSTER BANK, NATIONAL
ASSOCIATION,
Plaintiff,**

v.

**JUDITH POMPEI-SMITH,
Defendants.**

C.A. _____

COMPLAINT FOR DECLARATORY RELIEF

NOW COMES Webster Bank, National Association, through its attorneys, who respectfully presents to this Honorable Court its Complaint for Declaratory Relief pursuant to the Declaratory Judgment Act, 28 U.S.C., § 2201 and the Servicemembers' Civil Relief Act, 50 U.S.C., § 3901, et seq. By this Complaint, the plaintiff seeks a declaration of the rights of the defendants to claim the protections of the Servicemembers' Civil Relief Act and of the rights of the plaintiff to foreclose on a mortgage encumbering the real estate owned and occupied by the defendant.

JURISDICTION

1. This Court has jurisdiction over this civil action pursuant to 28 U.S.C., § 1331, as there is a federal question to be decided.
2. This judicial district is the appropriate venue for this civil action pursuant to 28 U.S.C., § 1391, as the defendant is domiciled in the State of Rhode Island.

PARTIES

3. Webster Bank, National Association ("Webster Bank") is a national banking association having a principal place of business located in Stamford, Connecticut.

4. On information and belief, Judith Pompei-Smith (“Pompei-Smith”) is a Rhode Island citizen having a usual place of abode located in Warwick, Kent County.

FACTS

5. During all times relevant hereto, Pompei-Smith was and remains the fee simple owner of the real property known and numbered 370 Larchwood Drive, Warwick, Kent County, Rhode Island (the “Property”).
6. A true and accurate copy of the deed establishing Pompei-Smith’s title is attached hereto as Exhibit A.
7. On or about February 28, 2003, in consideration for a loan made by Webster Bank, Pompei-Smith executed a promissory note to Webster Bank that was secured by a mortgage on the Property (the “Mortgage”).
8. A true and accurate copy of said Mortgage is attached hereto as Exhibit B.
9. On or about July 15, 2006 Pompei-Smith married Steven M. Smith.
10. At the time of the marriage, Steven M. Smith was a civilian and not serving in the military services of the United States or its allies.
11. Steven M. Smith was never granted any title to the Property.
12. On or about February 2, 2009 Steven M. Smith enlisted in the United States Army.
13. On or about August 31, 2009, Pompei-Smith sued for divorce in the Kent County, Rhode Island Family Court.
14. On or about May 18, 2010, the Kent County, Rhode Island Family Court entered a final judgment of divorce in the case.
15. A true and accurate copy of the Property Settlement Agreement produced in the divorce proceedings is attached hereto as Exhibit C.

16. Pursuant to the Property Settlement Agreement and other papers filed with the Kent County Family Court, no children were produced from the marriage of Pompei-Smith and Steven M. Smith.
17. Pursuant to the Property Settlement Agreement, Pompei-Smith retained the Property free and clear of any claims of Steven M. Smith and she remained solely responsible for paying the loan secured by the Mortgage. Exhibit C, ¶ 11.
18. Pompei-Smith's marriage to and subsequent divorce from Steven M. Smith resulted in no change to the Property's title or to the relationship between Pompei-Smith and Webster Bank.
19. In 2014, Pompei-Smith ceased paying the loan according to its terms and is delinquent for her January 1, 2014 payment.
20. As a result of her failure to pay the loan according to its terms, Webster Bank declared a default.
21. On June 11, 2013, Pompei-Smith was discharged in bankruptcy in Chapter 7 Case No. 1:13-bk-10642, filed in the United States Bankruptcy Court for the District of Rhode Island. As a result, Webster Bank's remedies on default are limited to the real estate.
22. As a result of the default, Webster Bank sought to exercise its remedies to collect the amounts due, including the exercise of the statutory power of sale contained in the Mortgage and the foreclosure of Pompei-Smith's right of redemption to the Property.
23. Upon learning that Webster Bank was seeking to exercise its rights, Pompei-Smith asserted that she is a dependent of Steven M. Smith and therefore subject to the protections of the Servicemembers' Civil Relief Act ("SCRA").

24. The purported basis for Pompei-Smith's assertion, as relayed by counsel to the United States Army, was that since Steven M. Smith assigned more than fifty percent (50%) of his income to Pompei-Smith that she qualifies as a dependent under the SCRA.
25. Pompei-Smith has stated directly to Webster Bank that she does not receive any income from Steven M. Smith.
26. Webster Bank disputes that Pompei-Smith qualifies as a dependent under the SCRA, as she has not established that at least fifty percent (50%) of her income comes from Steven M. Smith.
27. Webster Bank further disputes that Pompei-Smith is protected by the SCRA, as she has not established that the reason for her inability to pay the loan secured by the Mortgage is related to Steven M. Smith's service in the United States Army.

COUNT I

Action for Declaratory Judgment

28. The plaintiff realleges, reavers, and incorporates the foregoing paragraphs as if fully set forth herein.
29. There is an actual controversy between the parties as to whether Pompei-Smith is subject to the protections of the SCRA.
30. Webster Bank is entitled to a declaration as to the rights of the parties relative to the SCRA.
31. Webster Bank is entitled to a declaration that it has the right to exercise its remedies against the Property, as described in the Mortgage and other loan documents.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff, Webster Bank, National Association, respectfully requests that this Honorable Court enter an order pursuant to the Declaratory Judgment Act, 28 U.S.C., § 2201 and the Servicemembers' Civil Relief Act, 50 U.S.C., § 3901, et seq., declaring that the defendant Judith Pompei-Smith is not subject to the protections of the Servicemembers' Civil Relief Act and that Webster Bank, National Association is not prohibited from exercising its remedies against the property known as 370 Larchmont Drive Warwick, Kent County, Rhode Island.

Respectfully submitted,
WEBSTER BANK, NATIONAL ASSOCIATION,
By its attorneys,

/s/ Brian J. Hughes

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